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Attorneys for Defendant Phillips & Cohen Associates, Ltd.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|---------------------------------|---|------------------------------|
| FRANO B. BRESSANUTTI, IRENE |) | Case No. 10 CV 1922 MMA CAB |
| BRESSANUTTI, |) | |
| Plaintiffs, |) | |
| |) | ANSWER OF DEFENDANT PHILLIPS |
| vs. |) | & COHEN ASSOCIATES, LTD. TO |
| |) | PLAINTIFFS' COMPLAINT |
| ADVANTA BANK, PHILLIPS AND) | | |
| COHEN ASSOCIATES, LTD., DOES 1) | | |
| THROUGH 100, INCLUSIVE, |) | |
| |) | |
| Defendants. |) | |

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And
Cohen Associates, Ltd, ("Defendant") appearing for itself and no others, hereby answers
("Answer") the Complaint ("Complaint") of Plaintiffs Franco B. Bressanutti and Irene
Bressanutti, as follows:

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Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

Answer to Plaintiffs' Complaint

PARTIES AND JURISDICTION

1
2 1. Defendant lacks sufficient information to answer the allegations contained
3 in ¶ 1, and on that basis denies the same.
4

5 2. Defendant lacks sufficient information to answer the allegations contained
6 in ¶ 2, and on that basis denies the same.
7

8 3. Defendant lacks sufficient information to answer the allegations contained
9 in ¶ 3, and on that basis denies the same.
10

11 4. The allegations contained in ¶ 4 of the Complaint are not directed towards
12 this Defendant and do not require an affirmative response. To the extent that a response
13 is required, the allegations are denied.
14

15 5. Defendant admits it is a New Jersey corporation doing business in the state
16 of California. Except as expressly admitted, Defendant denies the remaining allegations
17 contained in ¶ 5.
18

19 6. Defendant lacks sufficient information to answer the allegations contained
20 in ¶ 6, and on that basis denies the same.
21

22 7. Defendant admits Plaintiffs purport to designate the term “Defendants” to
23 include various relationships between the parties, but denies the allegations and any and
24 all legal import of the designation in ¶ 7.
25

26 8. Defendant admits that Plaintiffs purport to seek redress for alleged
27 violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et*
28

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 *seq.*, and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA) Cal. *Civ. Code* §
2 1788, *et seq.* Defendant denies any and all liability, wrongdoing, and damages to the
3 extent alleged in ¶ 8. Except as expressly admitted, Defendant denies the remaining
4 allegations in ¶ 8.
5

6 **GENERAL ALLEGATIONS**
7

8 9. Defendant incorporates its responses to paragraphs 1 through 8 as though
9 fully set forth herein.

10 10. The allegations contained in ¶ 10 of the Complaint are not directed towards
11 this Defendant and do not require an affirmative response. To the extent that a response
12 is required, the allegations are denied.
13

14 11. Defendant admits its records indicate that an account identifying Plaintiffs
15 as the account holder as cosigner was placed with it for collection and that Defendant
16 undertook lawful efforts to collect on the account. Except as expressly admitted,
17 Defendant denies the remaining allegations in ¶ 11.
18

19 12. The allegations contained in ¶ 12 of the Complaint are not directed towards
20 this Defendant and do not require an affirmative response. To the extent that a response
21 is required, the allegations are denied.
22

23 13. Defendant lacks sufficient information to answer the allegations contained
24 in ¶ 13, and on that basis denies the same.
25

26 ///
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28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 14. The allegations contained in ¶ 14 of the Complaint are not directed towards
2 this Defendant and do not require an affirmative response. To the extent that a response
3 is required, the allegations are denied.
4

5 15. The allegations contained in ¶ 15 of the Complaint are not directed towards
6 this Defendant and do not require an affirmative response. To the extent that a response
7 is required, the allegations are denied.
8

9 16. The allegations contained in ¶ 16 of the Complaint are not directed towards
10 this Defendant and do not require an affirmative response. To the extent that a response
11 is required, the allegations are denied.
12

13 17. Defendant admits its records indicate that an account identifying Plaintiffs
14 as the account holder as cosigner was placed with it for collection in August 2009.
15 Except as expressly admitted, Defendant denies the remaining allegations in ¶ 17.
16

17 18. Defendant denies the allegations contained in ¶ 18.

18 19. Defendant denies the allegations contained in ¶ 19.

19 20. Defendant admits its records show a telephone call placed to the Plaintiff
20 on or about December 21, 2009. Except as expressly admitted, Defendant lacks sufficient
21 information to answer the remaining allegations contained in ¶ 20, and on that basis
22 denies the same.
23
24

25 21. Defendant admits its records show a telephone call placed to the Plaintiff
26 on or about December 22, 2009. Except as expressly admitted, Defendant lacks sufficient
27

28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 information to answer the remaining allegations contained in ¶ 21, and on that basis
2 denies the same.

3
4 22. Defendant denies the allegations contained in ¶ 22.

5 **FIRST CAUSE OF ACTION**

6 (VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT)

7
8 23. Defendant incorporates its responses to paragraphs 1 through 22 as though
9 fully set forth herein.

10 24. Defendant avers the allegation contained in ¶ 24 that Defendants are “debt
11 collectors” as that term is defined by statute, and is a legal conclusion which does not
12 require an admission or denial. Defendant refers all matters of law to the court. Except
13 as expressly admitted, Defendant denies the remaining allegations contained in ¶ 24

14
15 25. Defendant avers the allegation contained in ¶ 25 that Plaintiffs are
16 “consumers” as the term is defined by statute is a legal conclusion which does not require
17 an admission or denial. Defendant refers all matters of law to the court. Except as
18 expressly admitted, Defendant lacks sufficient information to answer the remaining
19 allegations contained in ¶ 25, and on that basis denies the same.

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21 26. Defendant denies the allegations contained in ¶ 26, and subparagraphs a
22 through c, inclusive, to the extent they are directed at this answering Defendant. To the
23 extent the allegations are directed to another defendant, this answering Defendant lacks

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28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 sufficient knowledge or information to answer the allegations contained in ¶ 26 of the
2 Complaint and on that basis denies the same.

3
4 27. Defendant denies the allegations contained in ¶ 27 to the extent they are
5 directed at this answering Defendant. To the extent the allegations are directed to another
6 defendant, this answering Defendant lacks sufficient knowledge or information to answer
7 the allegations contained in ¶ 27 of the Complaint and on that basis denies the same.

8
9 28. Defendant denies the allegations contained in ¶ 28 to the extent they are
10 directed at this answering Defendant. To the extent the allegations are directed to another
11 defendant, this answering Defendant lacks sufficient knowledge or information to answer
12 the allegations contained in ¶ 28 of the Complaint and on that basis denies the same.

13
14 **SECOND CAUSE OF ACTION**

15 (VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION
16 PRACTICES ACT)

17
18 29. Defendant incorporates its responses to paragraphs 1 through 28 as though
19 fully set forth herein.

20
21 30. Defendant avers the allegation contained in ¶ 30 that Defendants are “debt
22 collectors” as that term is defined by statute, and is a legal conclusion which does not
23 require an admission or denial. Defendant refers all matters of law to the court. Except
24 as expressly admitted, Defendant denies the remaining allegations contained in ¶ 30
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Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 31. Defendant avers the allegation contained in ¶ 31 that Plaintiffs are “debtors”
2 as the term is defined by statute is a legal conclusion which does not require an admission
3 or denial. Defendant refers all matters of law to the court. Except as expressly admitted,
4 Defendant lacks sufficient information to answer the remaining allegations contained in ¶
5 31, and on that basis denies the same.
6

7 32. Defendant avers the allegation contained in ¶ 32 that Plaintiffs are
8 “consumers” as the term is defined by statute is a legal conclusion which does not require
9 an admission or denial. Defendant refers all matters of law to the court. Except as
10 expressly admitted, Defendant lacks sufficient information to answer the remaining
11 allegations contained in ¶ 32, and on that basis denies the same.
12

13 33. Defendant denies the allegations contained in ¶ 33, and subparagraphs a
14 through g, inclusive, to the extent they are directed at this answering Defendant. To the
15 extent the allegations are directed to another defendant, this answering Defendant lacks
16 sufficient knowledge or information to answer the allegations contained in ¶ 33 of the
17 Complaint and on that basis denies the same.
18

19 In response to the paragraph beginning with WHEREFORE, Defendant admits
20 that Plaintiffs purport to seek redress for alleged violations of the FDCPA, 15 U.S.C. §
21 1692 *et seq.*, and the RFDCPA, Cal. *Civ. Code* § 1788, *et seq.* but denies violating the
22 FDCPA and /or the RFDCPA and denies Plaintiffs are entitled to the requested relief.
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Answer to Plaintiffs’ Complaint

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

As a first affirmative defense, Defendant alleges that Plaintiffs' Complaint should be dismissed because the various causes of action fail to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Bona Fide Error: FDCPA)

As a second affirmative defense, Defendant alleges, pursuant to 15 U.S.C. § 1692k(c), to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such violation.

THIRD AFFIRMATIVE DEFENSE

(Bona Fide Error: RFDCPA)

As a third affirmative defense, Defendant alleges, pursuant to California *Civil Code* § 1788.30(e), to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such violation.

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FOURTH AFFIRMATIVE DEFENSE

(Consent)

As a fourth affirmative defense, Defendant alleges that Plaintiffs consented to and/or invited the conduct for which they seeks relief.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

As a fifth affirmative defense, Defendant alleges that Plaintiffs knowingly and voluntarily waived their rights to obtain any or all of the relief sought in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

As a fifth affirmative defense, Defendant states that it currently has insufficient information upon which to form a belief as to whether it has additional affirmative defenses available. Defendant reserves its right to assert additional affirmative defenses in the event investigation and discovery indicate they would be appropriate.

WHEREFORE, Defendant Phillips & Cohen Associates, Ltd. respectfully requests that:

1. Plaintiffs take nothing by way of this Complaint;
2. Judgment of dismissal be entered in favor of Defendant Phillips & Cohen Associates, Ltd.;

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Answer to Plaintiffs’ Complaint

1 3. Defendant Phillips & Cohen Associates, Ltd. be awarded costs and
2 attorney's fees it has incurred in defending this lawsuit;

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4 4. Defendant Phillips & Cohen Associates, Ltd. is granted such other and
5 further relief as the Court deems just and proper.
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8 Dated: 9/16/10

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.

9 /s/Sondra R. Levine
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12 Sondra R. Levine
13 Attorneys for Defendant Phillips & Cohen Associates,
14 Ltd.
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